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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/539,173	03/03/2006	Morten Pontoppidan	893-012275-US (PAR)	8516
2512	7590	06/28/2007	EXAMINER	
PERMAN & GREEN 425 POST ROAD FAIRFIELD, CT 06824			NGUYEN, TUAN DUC	
			ART UNIT	PAPER NUMBER
			2614	
			MAIL DATE	DELIVERY MODE
			06/28/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/539,173	PONTOPPIDAN ET AL.	
	Examiner	Art Unit	
	Tuan D. Nguyen	2614	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/14/05</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Double Patenting

Claim Rejections - 35 USC § 101

1. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

2. Claims 1-16 are provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 1-16 of copending Application No. 10/323822. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 8-11 are rejected under 35 U.S.C. 102(e) as being anticipated by US patent number 6,757,390 (Ito et al).

Regarding claim 8, Ito et al discloses a mobile terminal comprising: a first, a second, and a third part (figures 1, 2, 6, column 4 lines 31-64 and column 7 lines 40-59)), a first hinge (2) pivotally interconnecting the first and second parts so that the first and second parts are adapted to be rotated between a first, lower angle between the first and second part and a second, higher angle, and second hinge (3) pivotally interconnecting the second and third parts so that the second and third parts are adapted to be rotated between a third, lower angle between the second and third part and a fourth, higher angle, wherein: one of the first, second, or third parts of the terminal has a microphone (8), one of the first, second, or third parts of the terminal has a sound emitter, and the terminal has an operative position wherein: the first part is rotated to the first, lower angle, the third part is rotated to the fourth, higher angle, and the microphone and sound emitter are accessible from a predetermined side of the terminal.

Regarding claim 9, Ito et al also shows wherein a largest, combined length of the first, second, at third parts in a direction perpendicular to the longitudinal axes exceeds half the circumference of a wrist of a user of the

terminal and wherein the terminal, in the operative position, has a largest linear length being lower than the largest, combined length (see figures 1, 2 and 6).

Regarding claim 10, Ito et al further shows wherein: the first, lower angle is lower than 45 degrees, the second, higher angle exceeds 90 degrees, the third, lower angle is lower than 110 degrees, and the fourth, higher angle exceeds 110 degrees (see figures 1, 2 and 6).

Regarding claim 11, Ito et al also discloses wherein the microphone (8) is positioned in the third part, and wherein the sound emitter is positioned in the first part.(figure 6, column 7 lines 47-53).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over US patent number 6,757,390 (Ito et al) in view of US patent number 5,966,776 (Ona).

Regarding claim 12, Ito et al does not disclose wherein: the first hinge has a biasing means adapted to bias the first part, relative to the second part,

in a direction toward the first, lower angle, and the second hinge has a biasing means adapted to bias the third part, relative to the second part, in a direction toward the fourth, higher angle, the terminal further comprising releasable means for maintaining the first and third parts, relative to the second part, in at least one position rotated at an angle to the first and fourth angles, respectively.

However, Ona Ona teaches a biasing means adapted to bias the first part, relative to the second part, in a direction towards a plurality of angles and releasable means for maintaining the first part, relative to the second part, in at least one position rotated at a plurality of angles (column 1 lines 56 - 67, 6 lines 63 - 67 and column 7 lines 1 - 3, lines 10 - 16).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hinges of Ito with the hinge architecture of Ona for the purpose of enabling the arm band members of the wrist watch to be maintained at any chosen angle, thereby providing easy manipulability of the wrist watch device as taught by Ona.

Regarding claim 14, Ito et al also discloses the method comprising, in sequence: 1. activating the maintaining means so as to have the biasing means rotate the first and third parts in relation to the second part for the terminal into the operative position, 2. operating the terminal, 3. while activating the maintaining means, positioning the three parts of the

terminal around a wrist of a person (column 4 lines 31-37, column 7 lines 60-67 and column 8 lines 1-6).

Regarding claim 15, Ito et al further discloses wherein step 1. comprises, while activating the maintaining means, removing the terminal from the person's wrist (column 4 lines 31-37, column 7 lines 60-67 and column 8 lines 1-6).

Regarding claim 16 Ito et al discloses the method comprising, subsequent to step 3., releasing the maintaining means and tightening the first and third parts around the wrist (column 4 lines 31-39).

Conclusion

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (571) 272-8163. The examiner can normally be reached on M-F 6:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2614

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TDN
6/18/07


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